

REPRESENTATIVE FOR PETITIONER:

Thomas Howlin, North Shore Club Homeowner’s Association, Inc. Member

REPRESENTATIVE FOR RESPONDENT:

Frank Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

North Shore Club Homeowner’s Association, Inc.,)	Petition Nos.: 71-026-16-1-5-02099-17
)	71-026-16-1-5-02100-17
)	
Petitioner,)	Parcel Nos.: 71-03-35-452-122.000-026
)	71-03-35-477-023.000-026
v.)	
)	County: St. Joseph
St. Joseph County Assessor,)	
)	
Respondent.)	Assessment Year: 2016

Appeal from the Final Determination of
St. Joseph County Property Tax Assessment Board of Appeals

December 21, 2018

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. The legislature has provided a property tax exemption for common areas in residential developments. The relevant statute provides that property must be treated as exempt when an assessor fails to respond within 30 days to notice that a property owner is claiming a common-area exemption. Because North Shore filed a notice with the

Assessor that complies with the statute and the Assessor failed to respond within the 30-day timeframe, we find North Shore's parcels exempt.

PROCEDURAL HISTORY

2. On September 21, 2016, North Shore filed Form 130 Notices with the Assessor claiming that the above-referenced parcels qualify for exemption as "common areas" under Ind. Code § 6-1.1-10-37.5. On August 11, 2017, North Shore and the Assessor submitted a Form 134 Joint Report to the St. Joseph Property Tax Assessment Board of Appeals ("PTABOA") indicating that the Assessor disagreed with North Shore's claim as to Parcel 71-03-35-452-122.000-026. And on November 29, 2017, North Shore filed Form 131 Petitions with the Board.¹
3. On July 25, 2018, our designated administrative law judge, Joseph Stanford ("ALJ"), held a consolidated hearing on North Shore's petitions. Thomas Howlin, Assessor Rosemary Mandrici, Deputy Assessor Patricia St. Clair, and Auditor's office supervisor Patricia Henry were sworn and testified.² Neither the Board nor the ALJ inspected the parcels.
4. North Shore offered the following exhibit:
Petitioner Exhibit 1: North Shore's bylaws and restrictive covenants
5. The Assessor offered the following exhibits:
Respondent Exhibit 1: Form 130 for parcel 71-03-35-452-122.000-026
Respondent Exhibit 2: Form 130 for parcel 71-03-35-477-023.000-026
Respondent Exhibit 3: Screenshot from North Shore's website
Respondent Exhibit 4: Property record card for parcel 71-03-35-452-122.000-026

¹ See Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to appeal to the Board if the county board has not issued a determination within 180 days of the date the notice of appeal was filed).

² Steven Good, North Shore's property manager, Joan Mihouk, North Shore's Board Secretary, and Brent Moberg, North Shore's Board President, appeared at the hearing, but they were not sworn and did not testify.

6. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

SUMMARY OF NORTH SHORE'S CASE

7. North Shore is a not-for-profit organization that manages a community of 70 condominiums and 50 townhomes. It owns the two parcels under appeal, which are both “common areas” as defined by Ind. Code § 6-1.1-10-37.5 and should therefore be exempt from property taxation. North Shore recently amended its bylaws, changing its definition of “common areas” to match the Indiana Code cite. North Shore further contends that its 2016 appeal should be retroactive to 2015, although Howlin could not specifically identify the section of the Indiana Code that provides for retroactive treatment. *Howlin testimony; Pet'r Ex. 1.*
8. The main parcel contains a clubhouse with a swimming pool, office, and a small gym or exercise room. The second parcel is unimproved, and it is negatively impacted by a “coal line” railroad project. It is just “a plot of grass” where “people walk their dogs.” Both parcels are for the “mutual use, benefit, and enjoyment of the members.” North Shore shares its swimming pool with a neighboring community. In exchange, North Shore’s members can use the neighboring community’s tennis courts. While Howlin acknowledged North Shore’s bylaws and covenants do not legally provide for “exclusive” use for its members, he contends that fact should not preclude North Shore from obtaining the exemption. *Howlin testimony; Pet'r Ex. 1.*
9. North Shore began the process of trying to obtain an exemption in 2015. According to Howlin, “the law calls for a 30-day response period” from the Assessor, which she did not comply with in 2015 or with the current appeal. Regarding the 2015 appeal, the PTABOA voted to deny North Shore’s claim on December 20, 2016 without even addressing the common-area exemption claim. While Howlin acknowledged that he did not send a written notice to the Assessor stating that North Shore intended to claim its

parcels as common area prior to filing the appeal, he contends, “it was part of the testimony back for the year 2015, reiterated in 2016.” North Shore was always intending to claim an exemption and it has never argued over the properties’ valuations. If, in fact, North Shore filed the wrong form or filed incorrectly, denying the appeal for that reason would constitute “form over substance.” *Howlin testimony.*

SUMMARY OF THE ASSESSOR’S CASE

10. North Shore’s parcels do not qualify for the common area exemption. The statute requires that the property be legally reserved for the exclusive use of the members of the homeowner’s association. Howlin’s testimony confirmed that North Shore has not reserved the parcels for the exclusive use of its members. And North Shore’s own website reveals that it shares its swimming pool with a neighboring community. *Mandrici testimony; Agostino argument; Resp’t Exs. 3, 4.*
11. North Shore also did not follow the proper procedures for claiming the exemption. The Assessor acknowledged that North Shore was not required to file Form 136 Applications for Property Tax Exemption. But the Assessor contends North Shore failed to give her notice that it was claiming its parcels as common areas prior to filing the appeals. Additionally, North Shore filed its appeals on Form 130-Short, a form designed to appeal the “subjective” issue of value rather than to claim an exemption. *Mandrici testimony; Agostino argument; Resp’t Exs. 1, 2.*

ANALYSIS

12. As a general proposition, all tangible property in Indiana is subject to taxation. Ind. Code § 6-1.1-2-1. Because property tax exemptions relieve properties from bearing their fair share of the cost of government services, exemptions are to be strictly construed against taxpayers and in favor of the State. *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (citation omitted), *review denied*. A taxpayer therefore always bears the burden of proving it is entitled to the

exemption it seeks. *State Bd. of Tax Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002).

13. North Shore seeks exemptions for its two parcels under Indiana Code § 6-1.1-10-37.5, which exempts common areas in residential developments from property taxation. The statute lays out detailed elements a property must meet in order to qualify for the common area exemption, including a requirement that the parcel must be “legally reserved for the exclusive use and enjoyment of all lot owners, occupants, and their guests, regardless of whether a lot owner makes actual use of the land.” Ind. Code § 6-1.1-10-37.5(a)(1).
14. Here, the Assessor specifically argues that North Shore’s two parcels fail to qualify for the exemption because North Shore has not reserved them for the exclusive use of its members. On the other hand, North Shore argues that we need not reach that question because the Assessor’s failure to timely respond to its attempts to obtain the exemption requires the parcels to be treated as common areas regardless of whether they otherwise qualify. Thus, before we endeavor to determine whether North Shore’s parcels actually qualify for exemption, we must decide whether the statute entitles North Shore to the exemption by default.
15. Subsections (d) through (g) of the statute provide:
 - (d) Notwithstanding any other provision of this article, a common area is exempt from property taxation, provided that the common area easements and covenants restricting the use and conveyance of common areas to lot owners are recorded, and notice is provided, to the appropriate county or township assessor.
 - (e) A county or township assessor shall designate an area as a common area after:
 - (1) receiving notice as provided in subsection (d); and
 - (2) determining that the area is a common area.
 - (f) If a county or township assessor determines that the area is not a common area, or determines that the area fails to meet the requirements of subsection

(d), then the county or township assessor shall send a written statement to the owner of the common area not later than thirty (30) days after receiving the notice under subsection (d). The written statement shall contain:

(1) the specific provisions on which the county or township assessor based the determination; and

(2) a statement that the owner of the common area shall have thirty (30) days to address the specific provisions provided in subdivision (1), and to establish the area as a common area that meets the requirements of subsection (d).

(g) If a county or township assessor fails to send a written statement to the owner of a common area as required by this section, then the area for which notice was provided in subsection (d) shall be considered a common area for purposes of this section.

I.C. § 6-1.1-10-37.5(d)-(g).

16. While not entirely clear, these subsections appear to operate as an informal application process for exempting common areas from taxation. And they place a heavy burden on assessors—failing to respond timely to such applications exempts property whether or not the assessor agrees it should be exempt. It also appears that the legislature intended the application to be informal. Unlike other exemptions where taxpayers must file written applications on forms prescribed by the Department of Local Government Finance, this statute simply requires “notice” to an assessor.
17. But there is a difference between informal communications and communications that fail to notify an assessor of what is being claimed. As we interpret the statute, the notice referenced in subsection (d) must clearly inform an assessor that easements and covenants entitling a property to exemption under Ind. Code § 6-1.1-10-37.5 have been recorded. Our interpretation follows the guiding principle that exemption statutes shift the common burden of funding government and therefore must be strictly construed. *Indianapolis Osteopathic Hosp., Inc.*, 818 N.E.2d at 1014.
18. With that in mind, we must determine whether North Shore clearly notified the Assessor that it was claiming an exemption under Ind. Code § 6-1.1-10-37.5. The Assessor

contends North Shore failed to give her notice that it was claiming the parcels as common areas before filing its Form 130s, but we find North Shore's Form 130s were the notice. Both Form 130s indicate that North Shore was claiming that its parcels' land, improvements, and personal property should be assessed at zero dollars. They also clearly state that North Shore is claiming the parcels as common areas and specifically refer to Ind. Code § 6-1.1-10-37.5 as the basis for the requested exemptions. The Form 130s further informed the Assessor that North Shore's bylaws and covenants had been recorded. We therefore conclude that both of North Shore's Form 130s complied with the notice provision provided for in subsection (d).

19. Although the Assessor agrees that a Form 136 exemption application is not required to satisfy subsection (d), she also argues that North Shore's Form 130s were not the proper forms to claim the exemption because they are designed to appeal "subjective" issues. But given the informal application process put in place by the legislature and the specificity of North Shore's Form 130s, we find that North Shore sufficiently notified the Assessor that it was claiming common-area exemptions for its two parcels under the statute.³

20. Because North Shore provided the Assessor with adequate notice under subsection (d), subsection (f) required the Assessor to send North Shore a written statement on or before October 21, 2016, explaining her reasons for denying the exemption claim and notifying North Shore that it had 30 days to correct any deficiencies. But the only written communication we have from the Assessor to North Shore is a Form 134 Joint Report submitted to the PTABOA on August 11, 2017 for Parcel 71-03-35-452-122.000-026.⁴ Not only was the report untimely, it does not state the specific provisions on which the Assessor based her decision to deny the exemption. Nor does it state that North Shore has 30 days to correct any deficiencies. And the record does not contain a corresponding

³ We likewise take no issue with the fact that North Shore initiated appeals with us using Form 131 petitions instead of Form 132 petitions because North Shore included enough detail to inform the Assessor it was seeking the common-area exemption.

⁴ The Form 134 is attached to North Shore's Form 131 petition for Parcel 71-03-35-452-122.000-026.

Form 134 for Parcel 71-03-35-477-023.000-026. We therefore conclude that the Assessor failed to comply with subsection (f). Consequently, North Shore is entitled to have its two parcels treated as exempt common areas for the 2016 assessment year pursuant to Ind. Code § 6-1.1-10-37.5(g).

21. North Shore also argued that we should address the 2015 assessment year or alternatively, that its 2016 appeal should apply retroactively to 2015. But there are no 2015 appeals pending before us. Although North Shore’s Form 131 petitions listed the assessment year under appeal as “2015/2016,” the Form 130s it attached to the petitions were for the 2016 assessment year. And as explained on the face of the Form 131 petitions, taxpayers must file separate petitions for each year they wish to appeal. We also note that our hearing notices indicated that the only assessment year under appeal was 2016.
22. Finally, North Shore failed to cite to any authority allowing our determination for 2016 to apply retroactively to 2015. It is a well-established principle that “each tax year—and each appeal process—stands alone.” *Fisher v. Carroll Cnty. Ass’r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Thus, we decline North Shore’s request to apply the result of its 2016 appeal to the 2015 assessment year.

SUMMARY OF FINAL DETERMINATION

23. North Shore made a prima facie case that its parcels are entitled to the common-area exemption for the 2016 assessment year.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.